IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO.2289 OF 2006

Shri Rajmani Jagannath Pandey, .. Petitioner.
Vs
Shri Chandradev Sumer Yadav, .. Respondent.

Mr A.K.Rai, for the petitioner.
Mr K.K.Malpathak, for the repsondent.

CORAM : D.B.BHOSALE,J.
DATE : 09.11.2006

PC:

1. Heard the learned counsel for the parties.

2. This petition by the tenant, challenges the order passed by the court below, holding that the petitioner-tenant has acquired a suitable accommodation and has shifted there much before the filing of the suit. The courts below have considered the entire material on record, which, in my opinion, substantiates the claim that the petitioner has acquired suitable alternate residential accommodation. Mr Rai, learned counsel for the petitioner, submitted that the acquisition of residential accommodation by tenant's wife cannot be treated as an acquisition of the suitable accommodation by the tenant, since the tenant cannot as of right stay with her. In support of this submission, he placed reliance upon the judgment of this Court in Pramila Madhav Damle and ors Vs Shri Waman R Koparde, 1999 (2) ALL MR 334. I perused the impugned judgment

and in particular paragraph 6 thereof, wherein the appeal court has made reference to the overtacts of the petitioner, which clearly establish that he has been staying in the alternative accommodation acquired by his wife, as claimed by the respondent-landlord. The judgment of this court in Pramila Madhav Damle's case is of no avail to the petitioner since in that case there was no evidence to establish that the tenant was staying with his wife as of right. Moreover, in that case there was sufficient evidence to show that the wife had acquired the accommodation out of her funds. In our case, the tenant has not produced any material on record to show that the alternate accommodation had been acquired by his wife out of her income. Mr Rai, then submitted that the land on which the suit premises stand, has been declared as slum and in view thereof no decree can be passed against the petitioner. Such contention was raised for the first time before the appeal court. The appeal court rejected the submission on merits. The learned counsel for the petitioner, when was directed to produce on record a notification declaring the property as slum, he was unable to produce the same. He even could not furnish the further details such as the date of notification etc. There is nothing on record to indicate that the property has been declared as slum. In the circumstances, this contention

also fails. Considering that there are concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under Article 227 of the Constitution of India to disturb the findings of facts, this writ petition fails and is dismissed as such.

(D.B.BHOSALE,J.)